



CITY OF POQUOSON

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(757)868-3000 Fax (757)868-3101

November 5, 2010

Ms. Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Water Docket, Environmental Protection Agency
Mail code: 28221T
1200 Pennsylvania Ave., NW.
Washington, DC 20460

Re: Docket I.D. No. EPA-R03-OW-2010-0736
Draft Chesapeake Bay TMDL

Dear Ms. Jackson:

Thank you for the opportunity to provide comments on the draft Chesapeake Bay TMDL. Poquoson is a coastal community. The City has existed alongside and treasured the Chesapeake Bay long before there were environmental movements or formal efforts to protect it. The Bay is our livelihood. Poquoson has consistently complied with the Chesapeake Bay Act, creating protected buffer areas and regulating runoff and sediment. We have constructed a city-wide sewer system and upgraded pump stations. Poquoson has the highest sewer hookup rate in the area, exceeding 99% connection.

Poquoson is an active member of the Hampton Roads Planning District Commission (HRPDC). The City has adopted the comments found in the November 8, 2010 letter authored by the HRPDC (re: Docket I.D. EPA-R03-OW-2010-0736) and sent on behalf of the City and other member communities.

In addition to the HRPDC comments sent on Poquoson's behalf, we request that you consider several other City-specific issues. These issues are detailed in the attachment, and are summarized below:

The EPA's program development is too fast-paced to adequately address and allow for public comment.

TMDL allocation maps incorrectly place Poquoson in the James and York River watersheds. Poquoson does not drain to these rivers. Poquoson and other coastal

communities that drain directly to the Bay are being penalized with overly rigorous requirements based on inland river and stream impairments.

Given the vast scale of the program and the EPA's schedule, localized issues that could prevent Poquoson from meeting the requirements are not being considered. The City's and this region's high groundwater, soils, flat terrain and tidal flooding must be considered if realistic requirements are going to be developed.

Approximately one-third of the City's area is composed of a federal wildlife refuge, created from a former bombing range. Poquoson does not control or have access to this area, and should not be responsible for any pollutant-laden runoff or sediment from the property.

While the EPA may not be required to perform financial assessments under the Clean Water Act, its decision to forego cost/benefit analyses is resulting in the development of unrealistic requirements that our citizens cannot afford.

In response to questions concerning program cost, EPA staffers have discussed affordability in general terms and suggested that local governments and citizens consider the benefit of a healthy Chesapeake Bay. The economic advantages of a clean Bay are not in dispute. The issue is whether the EPA TMDL, backstop measures and implementation schedule constitute the best approach to Bay cleanup. We question the merits of the program, not its goal. Is the EPA TMDL program achievable and cost effective? In lieu of any quantifiable EPA cost/benefit data, our regional planning district commission and our staff have had to analyze what information is available. In order to be fiscally responsible to our citizens, these analyses must include "worse case" scenarios, which appear to be the EPA backstop measures. In the absence of EPA data, given what information we do have, it is apparent that the TMDL program is overly burdensome, too costly, and likely unachievable.

We fear that implementing absurdly rigorous requirements will backfire, reducing public support of the Chesapeake Bay clean up movement. The EPA is choosing a highly political, rushed, enormous program. The bay would be better served if program development slowed down so that accurate input data, more independent scientific verification, phased implementation, and cost benefit analyses could be included.

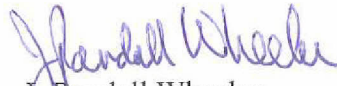
We understand that efforts to clean the bay must be strengthened. We understand that restoring the Chesapeake Bay will improve our lives, our City and the region. The question is not whether the Bay should be restored, but how. We urge you to slow the process down, consider the feasibility of meeting requirements on a local level, and try to anticipate any unintended consequences that might result from this program. From the outside looking in, it appears that there is too much emphasis on meeting arbitrary deadlines, and not enough on scrutinizing technical details. The Chesapeake Bay, the millions of people living in its watershed, and our economic future depend on this program succeeding. It must be developed and implemented more thoughtfully.

Once again, thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Gordon C. Helsel, Jr.", written in a cursive style.

Gordon C. Helsel, Jr.
Poquoson Mayor

A handwritten signature in blue ink, appearing to read "J. Randall Wheeler", written in a cursive style.

J. Randall Wheeler
Poquoson City Manager

Attachment :
City of Poquoson, VA Comment Details
CHESAPEAKE BAY TMDL

The Chesapeake Bay TMDL program is too fast-paced to allow public comments to be made and considered in program development. As discussed in the Hampton Roads Planning District Commission comments, the 45-day public comment period is too short. It does not provide the public adequate time to analyze and comment on such a vast, complicated program.

The comment schedule also places too little time between public comment and TMDL publication deadlines. There is not sufficient time for the EPA to both review state strategies and adequately address the anticipated volume of public comments. There are only 57 calendar and 37 business days between the public comment deadline and final TMDL publication. There are only 32 calendar and 22 working days between Virginia Phase I WIP finalization and TMDL publication. **Valid comments will not be given their due consideration in the interest of meeting a deadline.**

The size of the Chesapeake Bay watershed, combined with the program's aggressive schedule, limits regulators' ability to consider localized conditions. This creates unrealistic requirements in terms of what land Poquoson controls and can treat, and what "on the ground" treatment practices are feasible.

During webinar and other discussions, EPA staffers focus on "end of pipe" requirements. This type of thinking ignores coastal erosion and tide-borne pollutants. Poquoson and other coastal communities do not have an "end of pipe" separation between upland runoff and receiving waters.

Poquoson is a low-lying area, with a maximum elevation of approximately 10 feet above sea level. Some of our streets and lands experience almost-daily tidal inundation. A significant portion of Poquoson's drainage conveyance system experiences reversed flow twice a day during high tides, or is continually submerged. It is impossible to separate what pollutants are coming from upland development, and what pollutants are carried in with the tide. Nutrients, sediment and salt from the bay are found and cannot be separated from our yards, pipes, and ditches. This limits water re-use markets; makes water sampling ineffective; and eliminates many treatment options.

Prior to putting its draft stormwater regulations on hold, Virginia was developing regionally-based treatment recommendations, focusing on what would actually work in each of the state's geographic areas. The new EPA backstop measures revert to a state-wide, "one size fits all" approach. Given our region's high groundwater, poor soils and

low elevations, we question whether we can physically construct enough treatment measures to meet the backstops.

The nutrient trading option is not a magic bullet that will address this concern. While we welcome the opportunity to participate in nutrient trading, the amount of credits that Poquoson would have to purchase to meet program goals would likely not be available and would be cost prohibitive, even under the most aggressive financing scenarios.

The EPA appears to be ignoring the impact of placing Poquoson and other coastal communities into upland river watersheds that do not actually receive our storm water runoff. This will lead to allocations that are not scientifically justified, and to localities having to address other watersheds' impairments. The EPA website places Poquoson in two watersheds: Watershed 02080101, the Lower Chesapeake Bay; and Watershed 02080108, Lynnhaven-Poquoson. TMDL maps and Virginia's James River Tributary strategy place Poquoson in the James River watershed. **Poquoson does not drain to the James River. It drains to the Chesapeake Bay.** On its website, the EPA acknowledges that not all drainage divides shown on its maps are accurate.

Making allocations to the City based on James River impairments and water quality is akin to "guilt by association." While Poquoson may be located within short distance of the James, its receiving streams do not share the river's chlorophyll a impairment. No action taken within City limits will help improve water quality in the James River. The decision to eliminate coastal watersheds and to arbitrarily include coastal communities in nearby river basins will result in scientifically unjustifiable allocations. **In Poquoson's case, this random drawing of a line on a map will cost our citizens millions of dollars as we are compelled to alleviate an impairment we did not cause and cannot remedy.**

The fast pace and vast size of the TMDL program requires the EPA to make model input assumptions. A waste load allocation that is based on an assumed impervious land use rate and Poquoson's size would result in an excessively high allocation. The area of land within Poquoson's jurisdictional boundaries that can actually be treated for water quality or that could be realistically subject to waste load allocations is much smaller than the City's total acreage. This is because:

- Approximately one-third of Poquoson's land mass is composed of the Plum Tree Island National Wildlife Refuge. This is federal government-owned property, under the control of the Department of the Interior. Because of its past life as a bombing range, access to this area is restricted. Poquoson has no control over this area, and cannot provide mitigation for sedimentation or pollutant-laden runoff from this property. In order to be achievable, program requirements must reflect actual treatable land, not total City acreage.
- A significant portion of City acreage is located within conservation districts. This land is primarily composed of tidal wetlands. It does not contain impervious area.

- A significant portion of Poquoson's impervious area has already been provided water quality treatment. Per the Chesapeake Bay Act and our local City Code, all new impervious area in excess of 16% of the development's total area is treated. As the EPA has not requested actual land use data from localities, this treatment level is likely not reflected in Chesapeake Bay Model input data.

The EPA program is inordinately expensive, and the lack of OMB-type cost/benefit analyses or realistic program cost estimates is leading to overly burdensome requirements. Regardless of whether or not the Clean Water Act requires financial analysis, it is unconscionable not to provide an economic analysis of a program that will change the way of life of over 17 million people and fundamentally alter land development in 64,000 square miles. **Arbitrary deadlines, unsubstantiated technical requirements, and immense financial burdens are being imposed with little regard to achievability, common sense or the on-the-ground financial problems facing local governments.**

RESOLUTION NO. 3672

RESOLUTION AUTHORIZING THE SIGNING OF LETTERS TO THE
EPA AND VIRGINIA SECRETARY OF NATURAL RESOURCES
RE: CHESAPEAKE BAY TMDL PROGRAM

WHEREAS, TMDL is a fast-paced aggressive program to improve Chesapeake Bay water quality; and

WHEREAS, the draft TMDL, written by the EPA for publication in the Federal Register and Virginia's plan impose drainage system retrofit and other pollution reduction requirements on Poquoson which will impact land development and cost millions of dollars to implement;

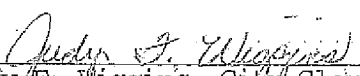
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Poquoson, Virginia:

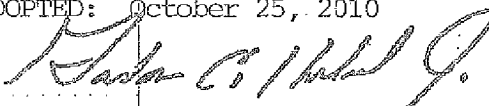
Section 1: That the Mayor and City Manager are hereby authorized to sign joint comment letters to the EPA and Virginia Secretary of Natural Resources prepared by the Hampton Roads Planning District Commission and to prepare and sign letters to the same agencies addressing Poquoson-specific concerns.

Section 2: That this resolution shall be in effect on and after its adoption.

ATTESTE:

ADOPTED: October 25, 2010


Judy F. Wiggins, City Clerk


Gordon C. Helsel, Jr., Mayor

The foregoing resolution was adopted by the affirmative roll call vote of a majority of the members in attendance, the ayes and nays recorded in the minutes of the meeting as shown below:

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|-----------------------|-----|--------------------|-----|
| Councilwoman Crawford | YES | Councilman Kreiger | YES |
| Vice Mayor Hunt | YES | Councilman Freeman | YES |
| Councilman Southall | YES | Councilman Meree | YES |
| Mayor Helsel | YES | | |